

REMARKS

This Application has been carefully reviewed in light of the Official Action mailed June 15, 2005. In order to advance prosecution of the present Application, Claims 2-4, 15, and 16 have been amended and Claim 1 has been canceled without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action in this Application.

Claim 1 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 14 of U.S. Patent No. 6,460,182. Applicant respectfully defers submitting a Terminal Disclaimer pending a determination of allowability of Claim 1.

Claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Frigo, et al. in view of Official Notice taken by the Examiner. Claim 1 recites ". . . transmitting first and second RF signals at selected frequencies within a second frequency band from at least two of said multiplicity of second locations one each to said at least two intermediate locations on at least two of said multiplicity of first paths; further modulating said transmitted light having said second wavelength traveling from said at least two intermediate locations to said first location on said at least two optical paths with said first and second RF signals from said at least two second locations; and receiving said first and second RF signals within said second frequency band at said first location." By contrast, the Frigo, et al. patent fails to provide further modulation of light carrying telephony signals transmitted to the first location at the second wavelength with the first and second RF

signals. The portions of the Frigo, et al. cited by the Examiner have no relationship with these features of the claim. Moreover, the Examiner takes Official Notice using a cable modem example when the claimed invention is associated with optical communications. Applicant respectfully requests the Examiner to cite a prior art document to support the rejection to Claim 1. Based on the deficiencies of the cited Frigo, et al. patent and the Official Notice taken by the Examiner, Applicant respectfully submits that Claim 1 is patentably distinct from the proposed Frigo, et al. - Official Notice combination.

Applicant notes with appreciation the allowability of Claims 2-4 if amended into independent form. Claim 2 has been placed into independent form, with Claims 3 and 4 dependent therefrom, as suggested by the Examiner. Therefore, Applicant respectfully submits that Claims 2-4 are in condition for issuance.

Applicant notes with appreciation the allowance of Claims 11-16. Claim 15 has been amended to include all limitations of base Claim 1. Claim 16 has been amended to correct a minor informality. Therefore, Applicant respectfully submits that Claims 11-16 are in condition for issuance.

With the presentation of two new extra independent claims, an additional filing fee is due. Attached herewith is a check made payable to the "Commissioner of Patents and Trademarks" in an amount of \$400.00 to satisfy the excess independent claims fee of 37 C.F.R. §1.16(b).

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicants



Charles S. Fish

Reg. No. 35,870

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CORRESPONDENCE ADDRESS:

2001 Ross Avenue, Suite 600

Dallas, TX 75201-2980

(214) 953-6507

Customer Number: 50627